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Re: KWCH-TV, Hutchison, Kansas, Application for
Assignment of License, File No.
BALCT-20060728AGC, ID No. 66413, *et al.*

Dear Counsel:

This letter is in regard to the above referenced applications seeking consent to the assignment of the licenses of television stations KWCH-TV, Hutchison, Kansas; KBSD-TV, Ensign, Kansas;¹ KBSL-TV, Goodland, Kansas;² and KBSH-TV, Hays, Kansas,³ from MG Broadcasting, LLC as E.A.T. to Sunflower Broadcasting, LLC, Inc. (Sunflower). In connection with the acquisition, Sunflower proposes to continue operating KBSH-TV and KBSD-TV as satellites of KWCH-TV, pursuant to Note 5 of Section 73.3555 of the Commission's Rules, which exempts satellite stations from application of the local television multiple ownership rule.⁴ As discussed below, KBSL-TV does not require a satellite waiver to permit its common ownership with the other stations. Sunflower has submitted an exhibit in support of its proposal.

Stations KBSD-TV, KBSH-TV and KBSL-TV have operated as satellites of KWCH-TV for several decades, and the Commission previously approved their common ownership and satellite operation in 1982, 1988, 1989, 1992, 1994, and 2000.⁵ Although the past satellite authorizations have included KBSL-TV,⁶ stations in a single DMA may be commonly owned, without the need for a waiver, if their

¹ File No. BALCT-20060728AGD, Id No. 66414.

² File No. BALCT-20060728AGE, Id No. 66416.

³ File No. BALCT-20060728AGF, Id No. 66415.

⁴ 47 C.F.R. § 73.3555, Note 5.

⁵ Letter from Barbara A. Kreisman, Chief, Video Services Division, Mass Media Bureau to John R. Feore, Jr., March 22, 2000.

⁶ *Id.*

Grade B contours do not overlap.⁷ In Appendix 1 to its Economic Viability Study by Mark R. Fratrik, Ph.D. (Fratrik Study) that forms part of its satellite waiver request, Sunflower demonstrates that the Grade B contour of KBSL-TV does not overlap with the Grade B contours of any of the stations being assigned here. Also, in an amendment to its application, Sunflower has explained that KBSL-TV will continue to maintain a main studio, have at least two employees, have program origination capability, and maintain a public inspection file at the station, making a main studio waiver unnecessary.

Pursuant to the Commission's television satellite policy, as set forth in *Television Satellite Stations*,⁸ an applicant for satellite status is entitled to a presumption that the proposed satellite operation is in the public interest if it meets three criteria: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station. Applications meeting these criteria, when unrebutted, will be viewed favorably by the Commission. If an applicant cannot qualify for the presumption, the Commission will evaluate the proposal on an *ad hoc* basis, and grant the application if there are compelling circumstances that warrant approval.

Appendix 1 to the Fratrik Study demonstrates that there is no City Grade overlap between KWCH-TV and any of the satellite stations or among the satellite stations. Therefore, the first criterion is met.

Compliance with the second criterion—location in an underserved area—can be demonstrated in either of two ways. An area is defined as underserved if, under the “transmission test” there are two or fewer full-service stations already licensed to the proposed satellite's community of license, or if, under the “reception test,” 25 percent or more of the area within the proposed satellite's Grade B contour, but outside of the parent's Grade B contour, receives four or fewer services, not including the proposed satellite service.⁹ Neither of the satellite stations is licensed to a community with more than two full-service television stations. Having satisfied the second criterion under the “transmission test,” there is no need to examine the alternative “reception test.”

With regard to the third criterion, Sunflower presents persuasive evidence that no alternative operator is willing to operate the satellites as stand-alone stations. The Wichita-Hutchinson DMA is the sixth largest television market in the nation in terms of geographic area. According to Sunflower, a single television signal cannot cover the market and signals located outside of the Wichita area – as all of these satellite stations are – can only reach limited numbers of viewers. As a result, all of the major network affiliates in the DMA use satellite stations to reach audiences across the market. Sunflower states that the fact that the two satellite stations each provide Grade B coverage to only part of the DMA would make it extremely difficult for them to obtain cable carriage across the DMA, further disadvantaging them as full-service operations.

The Fratrik Study states that all of the English-language television networks (including the two new networks – CW and My Network TV) already have affiliates in the Wichita-Hutchinson DMA. If KBSH-TV and KBSD-TV had to be operated as full service stations, there would be no English-language network with which they could affiliate. While there are no affiliates in the DMA of the Spanish-language

⁷ 47 C.F.R. § 73.3555(b)(1).

⁸ 6 FCC Rcd 4212 (1991).

⁹ *Television Satellite Stations*, 6 FCC Rcd 4212, 4215 (1991).

television networks, the Fratrik Study argues that the satellite stations serve relatively rural portions of the DMA and the Hispanic population of those areas is not large enough to support full-service operations. The Fratrik Study also contends that television advertising revenue growth in the Wichita-Hutchinson DMA has generally been slower than growth in the average market, and that trend is expected to continue. Absent substantial new revenues, it argues that additional full-service stations could only survive by taking advertising revenue from existing stations. The Fratrik Study concludes that, without a strong network affiliation or other source of attractive programming not already available in the market, the prospects for a new full-service station succeeding are remote.

The Fratrik Study also concludes that these stations could not be operated as full-service stations because of the additional capital investment that full-service operation would require. The Fratrik Study states that the stations would need to construct master control rooms, purchase production equipment, and other equipment for functions that are now performed at KWCH-TV, which it estimates would cost \$1.3 million per station. It further states that neither of the satellite stations presently operates digital channels since the current licensee elected to flash cut them to digital operation at the end of the transition. If they became full-service stations, they would have to either comply with or obtain a waiver of the Commission's DTV build-out requirements. The Fratrik Study claims that the estimated costs of DTV construction for these stations are between \$1.6 million and \$2.3 million per station. Dr. Fratrik contends that it would be extremely difficult to obtain financing to undertake these capital investments and to operate the stations on a full-service basis, particularly given the very weak economic prospects for independent operations. The Fratrik Study concludes that "there appears to be no chance that any purchaser of these satellite stations would be able to convert them to full-service stations."

Due to the rural nature of the market, the market's low-population density, the unlikelihood that the stations could obtain network affiliations, and the difficulties the stations would have obtaining cable carriage, we find that Sunflower has met the third criterion.

Based on the above, we believe that Sunflower's showing has met our presumptive satellite standard and that continued operation of KBSH-TV and KBSD-TV as satellites of KWCH-TV is justified and would serve the public interest. Accordingly, the request for continued operation of KBSH-TV and KBSD-TV as satellites of KWCH-TV pursuant to the satellite exception to Section 73.3555 of the Commission's Rules IS GRANTED. Upon finding that the applicants are fully qualified and that the public interest would be served thereby, the applications for assignment of the licenses of television stations KWCH-TV, Hutchison, Kansas; KBSD-TV, Ensign, Kansas; KBSL-TV, Goodland, Kansas; and KBSH-TV, Hays, Kansas, from MG Broadcasting, LLC as E.A.T. to Sunflower Broadcasting, LLC, Inc. ARE GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau